



**Proponent testimony submitted to the
Ohio Senate Judiciary Committee
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Chair Bacon, Vice Chair Dolan, Ranking Member Thomas, and Members of the Senate Judiciary Committee, thank you for the opportunity to provide testimony in support of Sub. Senate Bill 41. As Ohio's statewide coalition, the Ohio Alliance to End Sexual Violence (OAESV) advocates for comprehensive responses and rape crisis services for survivors and empowers communities to prevent sexual violence. OAESV unifies, supports, and serves Ohio's rape crisis centers.

On behalf of my agency and the programs we represent, I want to thank Senator Eklund for working so diligently to sponsor this important legislation. If passed, this will bring Ohio up to the national standard for victim advocacy and provide victims of horrific crimes in our state with the confidential services they need to access healing. As you know, Senate Bill 41 seeks to amend O.R.C. § 2317.02 to provide privilege to communication between qualified advocates and victims of sexual violence, domestic violence, stalking, and human trafficking. This critical statutory change has the capacity to strongly enhance victim services, increase reporting to law enforcement, and hold more offenders accountable.

I cannot emphasize how important this legislation truly is, without touching on the experience of victimization and the qualified advocate's role. Sexual violence impacts survivors across our state, irrespective of demographics. In 2017, Ohio rape crisis centers provided over 54,000 services to survivors, and we know that significantly more survivors needing services did not come forward. For many survivors, sex crime victimization results in long-term impacts on their physical, emotional, and financial wellbeing. Ultimately, the victimization does not end with the physical criminal act. Instead, survivors often interpret medical examinations, police interviews, questioning at trial, and other events spurred by the sex crime as further intrusions. Many steps in the criminal and civil justice processes leave survivors feeling like they lack control – a constant theme starting with a victimization they did not consent to, and followed by a string of events they have little to no control over.

As addressed by S.B. 41, qualified advocates are highly trained and employed by qualified crisis programs regulated by governmental funding streams. Though the term "qualified advocate" was created for this legislation, persons meeting the definition of "qualified advocate" have worked in

the field for decades. Across the country, qualified advocates are the only professionals specifically employed to support crime victims. Where prosecution-based advocates are primarily there to liaise between the prosecutor and survivor, counselors and social workers have limited roles devoted to one specific aspect of recovery, and civil attorneys are focused on the technical issues involved in the survivor's legal proceedings, qualified advocates are holistic case managers, assisting survivors in all ways ethically permissible to meet short-term health, safety and security needs, long-term justice system objectives, and adjustments to education and employment situations arising from the circumstances of their victimization. Qualified advocates are available from the moment the victim seeks services until the moment that victim decides they no longer need them. When one centralized person (the qualified advocate) is available to confidentially assist the survivor in navigating a complicated web of overlapping systems, the stability and recovery for that survivor, who has already endured a horrific crime, is increased.

The role of an advocate cannot function without confidentiality, and Ohio's lack of advocate privilege creates the potential for deeply damaging breaches to that confidentiality. As this committee may be aware, the Violence Against Women Act funding stream provides critical financial support to Ohio's rape crisis and domestic violence programs. This Federal funding stream mandates that no recipient disclose victim information unless a state statute requires disclosure.¹ Thus, Ohio is among one of only 14 states that cannot provide its victims with the confidentiality required by the grants that fund much of the necessary advocacy services. Employees of OAESV have previously worked for sexual violence programs in two states with privilege for advocate/survivor communications, and found in those states that the privilege was second nature to all persons working in the criminal justice system, and that prosecutors and survivors had productive relationships with increased effectiveness.

In working with Senator Eklund to develop this legislation, OAESV engaged with prosecutors, advocates, and sexual assault coalition staff from states with advocate privilege to determine which aspects of their laws work well, what does not work, and what changes they would recommend. The relevant parties in other states uniformly stated that privilege for these communications enhanced their ability to hold offenders accountable and increase survivor healing. For your reference, several statements from these parties are included as an appendix to this testimony. Ultimately, professionals working in the 36 states with privilege believe that "what is good for the victim is good for the state." We believe that passing Sub. S.B. 41 will benefit not just survivors, but systems across the board.

Privilege allows for truly confidential services, a fundamental principle of effective advocacy. Survivors need to feel safe from forced disclosure, and will come forward and report to police at

¹ Among other exceptions related specifically to clients' requests for disclosure or a client knowingly consent. See, Office on Violence Against Women; Conforming STOP Violence Against Women Formula Grant Program Regulations to Statutory Change: Definitions and Confidentiality Requirements Applicable to All OVW Grant Programs, 81 Fed. Reg. 85,877, at 85,891 (Nov. 29, 2016) (Codified at 29 C.F.R. Pt. 90), *available at* <https://www.federalregister.gov/documents/2016/11/29/2016-28437/conforming-stop-violence-against-women-formula-grant-program-regulations-to-statutory-change>.

an increased rate if they have secure communications. Notably, since the Ohio Rape Crisis Program Fund increased the availability of rape crisis services throughout the state starting in 2014, the rate of reporting to law enforcement has also increased by 27 percent.² This shows that survivors who receive services from a qualified advocate are more confident in systems and able to access justice. It is therefore logical that as services are enhanced through legal confidentiality, more survivors will come forward.

Survivors deserve a safe space to talk about the crimes they suffer, a safe space to discuss options and resources, a safe space that cannot be compromised to cause the survivor employment consequences, victim blaming, shame, punishment from family members, education barriers, or safety concerns. It is time for Ohio survivors to know they are seen, heard, and respected. Sub. S.B. 41 is necessary for supporting, empowering and valuing individuals who have experienced sexual violence, domestic violence, stalking or human trafficking crimes, and we urge this committee to pass this critically important legislation.

Thank you for the opportunity to testify today. I am available to answer any questions today and by email at rbeltre@oaesv.org.

² The Ohio Office for Criminal Justice Services reports that in the last year before the Rape Crisis Fund was dispersed, sexual violence survivors made 4,391 reports to law enforcement. In 2014, the first year the fund was dispersed and advocacy services expanded, 5,228 reports were made to law enforcement. In 2015, 5,441 reports were made, and in 2016, 5,589 reports were made. Ohio Statistical Analysis Center, OCJS Special Report: Crime in the United States 2014, Ohio Data (Oct. 22, 2015), *available at* http://www.publicsafety.ohio.gov/links/ocjs_crime_in_us2014.pdf; Ohio Statistical Analysis Center, OCJS Special Report: Crime in the United States 2015, Ohio Data (Sept. 26, 2016), *available at* http://www.publicsafety.ohio.gov/links/ocjs_crime_in_us2015.pdf; Ohio Statistical Analysis Center, OCJS Special Report: Crime in the United States 2016, Ohio Data (Sept. 25, 2017), *available at* http://www.publicsafety.ohio.gov/links/ocjs_CrimeintheUS2016.pdf.

Appendix A

Statements from Prosecuting Attorneys in States with Advocate Privilege

OAESV interviewed prosecuting attorneys from an array of states with an existing privilege for advocate/survivor communications. These are their statements:

- “I think the advocate privilege is important because it gives our victims a person to feel they can discuss anything with. We are not the victim's lawyer, so anything we are told, we have to tell the defense. Sometimes victims are concerned about things like immigration status or their own recreational drug use, and I think it's important for the victim to have a person they can talk to about things like that. And ultimately, that helps us as prosecutors keep our victims engaged with the prosecution process, and to feel comfortable letting us know some of the difficult things that will likely come out at trial anyway. This way we are prepared.”- Jennifer Gonzalez, Cook County State’s Attorney’s Office, Illinois
- “Whatever is good for the victim, is ultimately good for the State. If there is something in place - like the advocate privilege in Florida - that makes a victim more at ease when coming forward, it can only facilitate a more successful prosecution in the long run.” - Kerrie Ann Harper, Esq., Assistant State Attorney, 17th Judicial Circuit
- “The primary barrier communities have to effective confrontation of sexual crimes is that the criminal justice system demands too much incursion into a complainant's life. We know from decades of relevant research that justice system-related privacy violations create additional psychological trauma for the individual crime victim. The entire community benefits if some of these limited protections can be put in place to allow an individual survivor to seek justice without placing her--or his--entire life on display. Accountability for offenses is the key to stopping serial offending by sex offenders.” - Claire Harwell, Former Director of the New Mexico Attorney General’s Office Violence Against Women Division
- “N.M. Stat. §31-25-1 to -6, the Victim Counselor Confidentiality Act,” has not negatively affected or hindered the prosecution of criminal cases involving victims of a sexual assault or family violence who seek treatment or counseling.” - Susan Stinson, Deputy District Attorney, Albuquerque, New Mexico
- “In Washington State, we feel victims are best served when having access to both system based and community advocates. System based usually have initial contact and provide victims communication with the investigation and prosecution. Community based provide vital services beyond the investigation and prosecution. Privilege or confidentiality is different between system based and community, but we have found it to be workable as long as we respect the differing roles of the advocates. System based advocates are by court ruling, part of the prosecution team and subject to Ethics/Brady requirements. This can mean that if the victim provides information exculpatory to the defendant, it will have to be disclosed by the system based advocate.” Tom McBride, Executive Secretary, Washington Prosecuting Attorneys Association

- “Based on my experience (34 years as a prosecutor, and I’m in my 20th year as county attorney) having such a privilege enacted into law is useful, both to the survivor and to the advocate. The “rules of the game” become more certain. It is always difficult and stressful for an advocate (system-based or grassroots) to be asked to give opinions to a survivor about whether and to what extent the survivor’s comments might be repeated in court. When survivors learn of the existence of the privilege it should empower them to more fully and completely describe matters surrounding a sexual assault.” – Marty Lambert, Galatan County Attorney, Montana
- “In Maine we have had sexual assault (and domestic violence) advocate privilege for several decades. It hasn’t negatively impacted our ability to prosecute sex crimes in fact it has enhanced our ability to prosecute. The advocates provide a level of victim support that a busy prosecutor’s office cannot do. This increases the likelihood that a victim will be able to withstand the rigors of trial. Our greatest success is when we all work together and we can only do that when open and honest communication is allowed.” – Megan Maloney, District Attorney, Kennebec and Somerset Counties, Maine

Appendix B
Letter from Ramsey County Attorney's Office

Appendix C
VAWA STOP Regulations